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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,744	10/30/2001	Jon Weise	973-001	9689
7590	03/25/2004		EXAMINER	
Ward & Olivo Suite 300 382 Springfield Avenue Summit, NJ 07901			SAN MARTIN, EDGARDO	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,744

Applicant(s)

WEISE, JON

Examiner

Edgardo San Martin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 27 and 29-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 27 and 29-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter presented on claims 39 – 43 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- the specification does not describe the subject matter presented in claims 40 – 42.

Claim Objections

3. Claims 29 – 35 are objected to because of the following informalities:

- Claims 29 – 35 depend upon claim 28, which is indicated to be cancelled in the amendment filed on November 5, 2003; the claims

would be consider being dependable upon claim 24 for the sake of
advancing the prosecution of the application.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 40 – 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe the subject matter presented in claims 40 – 42; the only intent to describe the subject matter is found in Page 10, Lines 17 – 20 of the current application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 5, 7 – 9, 11 – 13, 15 – 20, 22 – 25, 27, 29 – 32, 34, 35, 37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urawa (JP 08237349) in view of Nakano (US 5,581,821).

With respect to claims 1, 2, 15, 24 and 25, Urawa teaches an earphone system consisting of an earphone device (Fig.3, Item 31) and a connector device (Fig.3, Item 32), an encasement structure (Fig.3, Item 2) comprising at least an anterior member and posterior member, wherein the anterior member and the posterior member are coupled together; a plurality of retraction means (Fig.3, Items 26 and 27) disposed within the encasement structure for selectively retracting the earphone and connector devices toward the encasement structure; and mounting means (Fig.1, Item 7) for removably mounting the encasement structure upon an entity for convenient placement of the encasement structure; wherein the plurality of retraction means operates the earphone and connector devices independently (Fig.3; Abstract). However, Urawa fails to teach a plurality of ear protection devices instead of the earphone and connector devices.

On the other hand, Nakano teaches a retractable ear protection system comprising a plurality of ear protection devices, wherein the plurality of ear protection devices comprises earplugs (Figs.2 and 3, Items 15 and 17).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Nakano earplugs with the Urawa independently operable retraction means because the teachings combination would result in a system of independently retractable earplugs, in which, each of the earplugs could be controlled

to extend to a desire length depending on the need, and wherein only one of the earplugs could be used if that is the need.

With respect to claim 3, Nakano teaches wherein the earplugs are removably coupled to the retraction means (Col.4, Line 34+).

With respect to claims 4, 16 and 29, the obvious combination of the teachings of Urawa and Nakano teach wherein the plurality of ear protection devices is independently removable and coupled to the retraction means.

With respect to claims 5 and 17, Urawa teaches wherein the interior of the encasement structure comprises protruding axes perpendicular the anterior member (Fig.3, central members wherein the spools (25, 26) are mounted).

With respect to claims 7, 18, 27 and 30, Urawa teaches wherein the retraction means comprises a cord (Fig.3, Items 33 and 34) for coupling the plurality of ear protection devices to the encasement structure.

With respect to claims 8, 19 and 31, Urawa teaches wherein the retraction means comprises spools (Fig.3, Items 25 and 26) for mounting the cord.

With respect to claims 9, 11, 20, 22, 32 and 34, Urawa teaches wherein the retraction means comprises a spring loaded locking mechanism (Fig.3, Items 17 and 18) for securing the extension of the plurality of ear protection devices, and wherein the spring loaded locking mechanism comprises a push button (Fig.3, Items 17 and 18).

With respect to claims 12, 23 and 35, Nakano teaches a spring-loaded locking mechanism comprising a ratchet (Figs.4 – 6).

With respect to claims 13 and 37, Urawa teaches wherein the mounting means comprises clip-on means (Fig.1, Item7).

With respect to claim 40, Urawa teaches wherein the mounting means is only attached to a user's cell phone (Fig. 5).

6. Claims 6, 10, 21, 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urawa (JP 08237349) in view of Nakano (US 5,581,821), and further in view of Rozon (US 5,279,473).

Urawa and Nakano teaches the limitations described in the previous rejections, but fail to disclose wherein the encasement structure is constructed of plastic, and wherein the spring loaded locking mechanism comprises a thumb slide.

Nevertheless, Rozon teaches a cord retraction device comprising a spring locking mechanism (Fig.2, Item 37) comprising a thumb slide (Fig.2, Item 36), and wherein an encasement structure is constructed of plastic (Col.2, Line 27).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Rozon configuration with the Urawa and Nakano design because the thumb slide is easy to use and provide a good ergonomically fit actuator for a user to use, and the plastic encasement structure would provide an economical and light-weight structure that would be easy to carry by and user and low cost to produce.

7. Claims 14 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urawa (JP 08237349) in view of Nakano (US 5,581,821), and further in view of Burger et al. (US 4,802,638).

Urawa and Nakano teaches the limitations described in the previous rejections, but fail to disclose wherein the clip-on means is rotatable.

On the other hand, Burger et al. teach a cord stowage device comprising a rotatable clip-on means (Fig.12).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Burger et al. rotatable clip-on with the Urawa and Nakano design because it would provide a certain degree of movement that would prevent the cord from getting tangle with the surface of the encasement structure.

8. Claims 39 and 41 – 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urawa (JP 08237349) in view of Nakano (US 5,581,821), and further in view of Yang (US 5,984,224).

Urawa and Nakano teaches the limitations discussed in the previous rejections, but fail to disclose wherein the mounting means could be attached to a user's shirt collar or a bathing cap or an eye gear or a jacket.

Nevertheless, Yang teaches a cord spooling device that comprises a mounting means (Fig.1, Item 40) that could be attached onto any item worn by a user (Abstract and Col.2, Lines 6 – 11).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Yang configuration with the Urawa and Nakano design because it would provide the versatility of being attached to any item worn by a user increasing the practical applications of the ear protection system.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by the Amendment filed on November 5, 2003.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on (571) 272-2071. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Edgardo San Martín
Patent Examiner
Art Unit 2837
Class 181
March 15, 2004


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SUPERVISORY PATENT EXAMINER